



**48 CFR Part 538**

**[GSAR Case 2022-G514; Docket No. GSA-GSAR-2023-0009;  
Sequence No. 1]**

**RIN 3090-AK58**

**General Services Administration Acquisition Regulation;  
Standardizing Federal Supply Schedule Clause and Provision  
Prescriptions**

**AGENCY:** Office of Acquisition Policy, General Services Administration (GSA).

**ACTION:** Proposed rule.

**SUMMARY:** The General Services Administration is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to clarify when GSAR clauses apply to Federal Supply Schedule contracts.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before **[Insert date 60 days after date of publication in the *FEDERAL REGISTER*]** to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to GSAR Case 2022-G514 to: <https://www.regulations.gov> via the Federal eRulemaking portal by searching for "GSAR Case 2022-G514". Select the link "Comment Now" that corresponds with GSAR Case 2022-G514. Follow the instructions provided at the "Comment Now" screen. Please include your name, company

name (if any), and "GSAR Case 2022-G514" on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

*Instructions:* Please submit comments only and cite GSAR Case 2022-G514, in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Ms. Adina Torberntsson, Procurement Analyst, at [gsarpolicy@gsa.gov](mailto:gsarpolicy@gsa.gov) or (720) 475-0568. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at [gsaregsec@gsa.gov](mailto:gsaregsec@gsa.gov) or 202-501-4755. Please cite GSAR Case 2022-G514.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The General Services Administration (GSA) conducts routine reviews of its acquisition regulations. Routine review of the GSAR, as well as feedback from GSA's operational offices, prompted this change. The review indicated a need for improved communication to address when

the GSAR clauses apply to Federal Supply Schedule contracts established by a delegated agency.

The GSA Schedule, also known as Federal Supply Schedule (FSS), and Multiple Award Schedule (MAS), is a long-term governmentwide contract with commercial companies that provide access to millions of commercial products and services at fair and reasonable prices to the Federal Government. GSA may delegate certain responsibilities to other agencies (e.g., GSA has delegated authority to the Department of Veterans Affairs (VA) to procure medical supplies under the VA Federal Supply Schedules Program).

Such delegation provides the authorized agency autonomy over their resulting contract. The contract is published on the Federal Supply Schedule website, and often looks like every other available FSS contract apart from the naming convention. Contracts administered solely by GSA have a "GS" naming convention.

This change will streamline the prescription language. Prescription language is the language that instructs when a clause is to be applied, when establishing a Schedule contract.

## **II. Discussion and Analysis**

This rule proposes to clarify when the GSAR clauses apply to Federal Supply Schedule contracts including those awarded under a GSA delegation. The only current delegation is to the Department of Veteran Affairs (VA).

GSA may delegate authority when requested to by an external agency, with the delegation being approved by the Administrator of GSA. Currently the only agency who has such delegation is the Department of Veterans Affairs. In accordance with 40 U.S.C. 121(d), the operation and management of health care related Federal Supply Schedule Contracts pursuant to 40 U.S.C. 501, are currently delegated by GSA to the Department of Veterans Affairs.

FAR 38.000 identifies that the FSS program is owned and managed by GSA. GSA authorizes the VA to award Schedule contracts as described in FAR 38.101(d). Although GSA delegates the VA to create and maintain schedules to assist with their programs, the VA is required to adhere to GSA policy in maintaining these Schedules. This is further described within the authorization letter provided to the VA.

This rule provides streamlined language for the prescription of Federal Supply Schedule clauses at GSAR 538.273. This rule also clarifies the steps that need to be taken if an outside agency wants to deviate from those clauses at GSAR 538.201.

### **III. Expected Impact of the Rule**

GSA believes that the existing GSAR clauses are currently being used correctly. This change will have no impact on the approximately 13,000 FSS contractors already

using the existing clauses. The changes do not alter the manner in which the contractors conduct business.

However, there is an identified need to clarify the delegation information, as well as the Federal Supply Schedule prescription language. The proposed changes will only impact delegated Government agencies (currently only VA) to better clarify how the delegation works, how to document the contract file, and how to request a deviation if needed.

#### **IV. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. OIRA has determined this rule is not a significant regulatory action and, therefore, is not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

#### **V. Regulatory Flexibility Act**

GSA does not expect this proposed rule to have a significant economic impact on a substantial number of

small entities within the meaning of the Regulatory Flexibility Act,<sup>5</sup> U.S.C. 601, et seq., because the described changes clarify the language and only slightly modify the current text. The meaning behind the changed text remains the same, and therefore any burden would have been identified previously. However, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared consistent with 5 U.S.C. 603. The analysis is summarized as follows:

The objective of the rule is to improve the understanding of delegation and coordination expectations of FSS policies for delegated agencies.

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including the GSAR, to control the relationship between GSA and contractors. In addition, 41 U.S.C. 152 provides GSA authority over the FSS program.

The rule applies to large and small businesses, which are awarded FSS contracts. Information generated from the System for Award Management (SAM), for Fiscal Year 2022 has been used as the basis for estimating the number of contractors that may be involved. Specifically, FSS contracts for delegated agencies (i.e., Department of Veteran Affairs) were analyzed. Examination of this data revealed 1,700 applicable FSS contracts were awarded. Of these 1,700 new awards, 1,417 (83 percent) contract awards were to small business entities.

The rule does not change reporting, recordkeeping, or other compliance requirements for FSS contracts. The rule merely clarifies requirements currently in use in FSS solicitations and contracts, and does not implement new or changed requirements.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives to this rule which would accomplish the stated objectives. This rule does not initiate or impose any new administrative or performance requirements on small business contractors because the policies are already being followed. The rule merely clarifies language in the GSAR to make it more accessible to the reader by removing references to outdated clauses or excessive language.

The Regulatory Secretariat Division will be submitting a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. GSA

invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (GSAR Case 2022-G514) in correspondence.

#### **VI. Paperwork Reduction Act**

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### **List of Subjects in 48 CFR Parts 538.**

Government procurement.

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Therefore, GSA proposes to amend 48 CFR part 538 as set forth below:

1. The authority citation for 48 CFR part 538 continues to read as follows:

**AUTHORITY:** 40 U.S.C. 121(c).

**PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING**

2. Add sections 538.000 and 538.001 to read as follows:

**538.000 Scope of part.**

(a) This part prescribes policies and procedures for contracting for supplies and services under the Federal Supply Schedule (FSS) program. GSA may delegate certain responsibilities for other agency acquisition programs as they relate to the establishment of individual federal supply schedules.

(b) The authority of other agencies to award FSS contracts can only be accomplished through delegation from GSA. An agency delegated authority by GSA to award contracts under the FSS program is responsible for complying with GSA regulations and policies that apply to the FSS program, unless an exception is approved by GSA (see 538.001).

**538.001 General.**

If a policy, regulation, or clause is identified as not applicable or in conflict to what is delegated by GSA, the delegated agency shall submit a determination and



finding supporting the rationale as to why it does not apply, or is in conflict, in accordance with the delegation that was already received from GSA. The determination and finding must be approved by the GSA Senior Procurement Executive, the FAS Commissioner of the Federal Acquisition Service (FAS) or a designee.

3. Revise section 538.273 to read as follows:

**538.273 FSS solicitation provisions and contract clauses.**

The following clauses and provisions apply to FSS solicitations and contracts, unless otherwise excepted (see 538.001) or as otherwise stated below. For example, if only used in solicitations, the prescription will clearly state this. If the language does not specify "solicitations" then the clause applies to both FSS solicitations and contracts.

(a) Insert the following provisions in FSS solicitations:

(1) 552.238-70, Cover Page for Worldwide Federal Supply Schedules. Use in all FSS solicitations.

(2) 552.238-71, Notice of Total Small Business Set-Aside. Use in FSS solicitations containing special item numbers (SINs) that are set aside for small business.

(3) 552.238-72, Information Collection Requirements. Use in all FSS solicitations.

(b) Insert the following clauses and provisions in FSS solicitations and contracts as an addendum to FAR

52.212-1, Instructions to Offerors - Commercial Products and Commercial Services:

(1) 552.238-73, Identification of Electronic Office Equipment Providing Accessibility for Individuals with Disabilities.

(2) 552.238-74, Introduction of New Supplies/Services (INSS). Only for those solicitations allowing the introduction of new supplies/services. Note: GSA Form 1649, Notification of Federal Supply Schedule Improvement, may be required if revising a Special Item Number (SIN).

(c) Insert the following provisions in FSS solicitations as an addendum to FAR 52.212-2, Evaluation-Commercial Products and Commercial Services:

(1) 552.238-75, Evaluation - Commercial Products and Commercial Services (Federal Supply Schedule).

(2) 552.238-76, Use of Non-Government Employees to Review Offers. Use only in FSS solicitations when non-government employees may be utilized to review solicitation responses.

(d) Insert the following clauses in FSS solicitations and contracts as an addendum to FAR 52.212-4, Contract Terms and Conditions-Commercial Products and Commercial Services:

(1) 552.238-77, Submission and Distribution of Authorized Federal Supply Schedule Price Lists.

(2) 552.238-78, Identification of Products that have Environmental Attributes. Use only in solicitations and contracts that contemplate products with environmental attributes.

(3) 552.238-79, Cancellation.

(4) 552.238-80, Industrial Funding Fee and Sales Reporting. Use Alternate I for FSS with Transactional Data Reporting requirements.

(5) 552.238-81, Price Reductions. Use Alternate I for FSS with Transactional Data Reporting requirements.

(6) 552.238-82, Modifications (Federal Supply Schedules).

(i) Use Alternate I for FSS that only accept eMod.

(ii) Use Alternate II for FSS with Transactional Data Reporting requirements.

(7) 552.238-83, Examination of Records by GSA (Federal Supply Schedules).

(8) 552.238-84, Discounts for Prompt Payment.

(9) 552.238-85, Contractor's Billing Responsibilities.

(10) 552.238-86, Delivery Schedule. Use only for supplies.

(11) 552.238-87, Delivery Prices.

(12) 552.238-88, GSA Advantage!®. This clause is not required for the Department of Veterans Affairs Federal Supply Schedules.

(13) 552.238-89, Deliveries to the U.S. Postal Service. Use only for mailable articles when delivery to a U.S. Postal Service (USPS) facility is contemplated.

(14) 552.238-90, Characteristics of Electric Current. Use only when the supply of equipment which uses electrical current is contemplated.

(15) 552.238-91, Marking and Documentation Requirements for Shipping. Use only for supplies when the need for outlining the minimum information and documentation required for shipping is contemplated.

(16) 552.238-92, Vendor Managed Inventory (VMI) Program. Use only for supplies when a VMI Program is contemplated.

(17) 552.238-93, Order Acknowledgement. Use only for supplies.

(18) 552.238-94, Accelerated Delivery Requirements. Use only for supplies.

(19) 552.238-95, Separate Charge for Performance Oriented Packaging (POP). Use only for products defined as hazardous under Federal Standard No. 313.

(20) 552.238-96, Separate Charge for Delivery within Consignee's Premises. Use only for supplies when allowing offerors to propose separate charges for deliveries within the consignee's premises.

(21) 552.238-97, Parts and Service.

(22) 552.238-98, Clauses for Overseas Coverage. Use only when overseas acquisition is contemplated. Choose the most appropriate clause(s) to the contract scenario. For example there are multiple free on board (F.o.b.) clauses. Select those that apply best to what is being procured. The following clauses and provisions shall also be inserted in full text, when applicable.

(i) FAR 52.214-34 Submission of Offers in the English Language.

(ii) FAR 52.214-35 Submission of Offers in U.S. Currency.

(iii) 552.238-90 Characteristics of Electric Current.

(iv) 552.238-91 Marking and Documentation Requirements for Shipping.

(v) 552.238-97 Parts and Service.

(vi) 552.238-99 Delivery Prices Overseas.

(vii) 552.238-100 Transshipments.

(viii) 552.238-101 Foreign Taxes and Duties.

(ix) FAR 52.247-29 F.o.b Origin.

(x) FAR 52.247-34 F.o.b. Destination.

(xi) FAR 52.247-48 F.o.b. Destination-Evidence of Shipment.

(23) 552.238-99, Delivery Prices Overseas. Use only when overseas acquisition is contemplated.

(24) 552.238-100, Transshipments. Use only when overseas acquisition is contemplated.

(25) 552.238-101, Foreign Taxes and Duties. Use only when overseas acquisition is contemplated.

(26) 552.238-102, English Language and U.S. Dollar Requirements.

(27) 552.238-103, Electronic Commerce. This clause is not required for Department of Veterans Affairs Federal Supply Schedules.

(28) 552.238-104, Dissemination of Information by Contractor.

(29) 552.238-105, Deliveries Beyond the Contractual Period-Placing of Orders.

(30) 552.238-106, Interpretation of Contract Requirements.

(31) 552.238-107, Export Traffic Release (Supplies). Use in FSS solicitations and contracts for supplies. This clause is not required for vehicles.

(32) 552.238-108, Spare Parts Kit. Use only for products requiring spare part kits. This information is to be specified at the order level.

(33) 552.238-109, Authentication Supplies and Services. Use only for information technology associated with the Homeland Security Presidential Directive 12 (HSPD-12).

(34) 552.238-110, Commercial Satellite Communication (COMSATCOM) Services. Use only for COMSATCOM services.

(35) 552.238-111, Environmental Protection Agency Registration Requirement. Use only when products may require registration with the Environmental Protection Agency.

(36) 552.238-116, Option to Extend the Term of the FSS Contract. Use when appropriate.

(e) Insert the following fill-in information within the blank of paragraph (d) of FAR clause 52.216-22, Indefinite Quantity: "the completion of customer order, including options, 60 months following the expiration of the FSS contract ordering period".

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